

<p>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO</p> <p>1437 Bannock Street Denver, CO 80202</p> <hr/> <p>STATE OF COLORADO, ex rel. JOHN W. SUTHERS, ATTORNEY GENERAL,</p> <p>Plaintiff,</p> <p>v.</p> <p>NATIONAL REBATE FUND, INC., d/b/a NATIONAL ENERGY REBATE FUND and TIM STUBBS, individually,</p> <p>Defendants.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Attorneys for Plaintiff: JOHN W. SUTHERS Attorney General ALISSA HECHT GARDENSWARTZ, 36126* Assistant Attorney General alissa.gardenswartz@state.co.us JAY B. SIMONSON, 24077* First Assistant Attorney General jay.simonson@state.co.us 1525 Sherman Street, 4th Floor Denver, CO 80203 (303) 866-5079 (303) 866-4916 Fax *Counsel of Record</p>	<p>Case No.:</p>
<p style="text-align: center;">COMPLAINT</p>	

Plaintiff, the State of Colorado, upon relation of John W. Suthers, Attorney General for the State of Colorado, by and through undersigned counsel, states and alleges as follows:

INTRODUCTION

1. This is an action brought by the State of Colorado pursuant to the Colorado Consumer Protection Act, Colo. Rev. Stat. §§ 6-1-101 through 115 (2008) (“CCPA”), to enjoin and restrain Defendants from engaging in unlawful deceptive trade practices, for statutorily mandated civil penalties, for disgorgement, restitution, and for other relief as provided in the CCPA.

PARTIES

2. John W. Suthers is the duly elected Attorney General of the State of Colorado and is authorized under Colo. Rev. Stat. § 6-1-103 (2008) to enforce the provisions of the CCPA.

3. Defendant National Rebate Fund, Inc., d/b/a/ National Energy Rebate Fund, (“NRF”) is a Colorado corporation with a principal place of business located at 2132 G Street, Unit 8, Grand Junction, Colorado 81503.

4. Defendant Timothy Stubbs is an individual residing at 265 Red Rim Drive, Grand Junction, Colorado, 81507. At all times relevant to this action, Mr. Stubbs was the Chief Executive Officer of NRF, and had formulated, directed, controlled, or participated in the alleged unlawful acts or practices of NRF.

JURISDICTION AND VENUE

5. Pursuant to Colo. Rev. Stat. §§ 6-1-103 and 6-1-110(1) (2008), this Court has jurisdiction to enter appropriate orders prior to and following an ultimate determination of liability.

6. The violations alleged herein were committed, in whole or in part, in Denver County, Colorado, as Defendants offered their rebate program through Denver merchants to consumers in Denver. Accordingly, Defendants did business and affected commerce in the City and County of Denver as well as elsewhere in Colorado. Therefore, venue is proper in Denver County, Colorado pursuant to § 6-1-103, C.R.S. (2008) and Colo. R. Civ. P. 98 (2008).

RELEVANT TIMES

7. The conduct that gives rise to the claims for relief contained in this Complaint began in 2004 and continues through the present.

8. This action is timely brought pursuant to Colo. Rev. Stat. § 6-1-115 (2008) in that it is brought within three years of the date on which false, misleading, and deceptive acts or practices occurred and/or were discovered, and the series of false, misleading, and deceptive acts is continuing.

PUBLIC INTEREST

9. Through the unlawful practices of their business, vocation, or occupation, Defendants have deceived, misled, and financially injured consumers both within and outside Colorado. Specifically, Defendants have violated the CCPA by intentionally misleading consumers about the characteristics of the rebate program offered through NRF. Therefore, the Colorado Attorney General believes these legal proceedings are

in the public interest and are necessary to safeguard citizens from Defendants' unlawful business activities.

GENERAL ALLEGATIONS

10. Defendant Tim Stubbs formed NRF as a Colorado corporation on or about February 24, 2004. Prior to its incorporation in Colorado, NRF operated as a Utah corporation and did business in Colorado. NRF was first incorporated on or about March 11, 2002.

11. NRF was formed to operate rebate schemes. These rebate schemes purport to offer consumers the opportunity to obtain rebates in the thousands of dollars on big-ticket items, such as products purchased for home improvement, so long as the consumer remembers to submit his claim and follows "straightforward" terms and conditions in submitting his claim.

12. The most pervasive rebate scheme operated by Defendants is the National Energy Rebate Fund ("NERF"). According to Defendants, NERF creates an incentive for consumers to purchase energy-efficient products from NERF-approved merchants through offering consumers the opportunity to obtain a substantial rebate on those products. In fact, the NERF program is designed to convince consumers to purchase higher-priced products by offering them false hopes that they have a fair opportunity to obtain a substantial rebate.

13. The NERF rebate scheme works as follows: a consumer is offered the rebate program in conjunction with a particular product. Defendants allow a merchant to offer consumers rebate vouchers valued at up to \$7000 each, and to offer consumers a maximum of three vouchers total per consumer, although the value of the rebate vouchers issued cannot exceed the purchase price of the product.

14. Once the voucher is issued, the consumer has 17 days from the date the voucher is issued to register the voucher with an entity called Fund Administrators. Registration entails sending the completed voucher stub to Fund Administrators by registered mail.

15. Fund Administrators will send one letter to the consumer 24 months after the date that the rebate voucher has been registered to remind the consumer that he or she must submit a rebate claim between the 47th and 48th month after the claim has been registered. This letter is sent whether or not the consumer initially registered his or her rebate claim properly.

16. The consumer must then file his or her rebate claim with Fund Administrators for the rebate no earlier than the 47th month from the voucher issue date, and no later than the 48th month from the voucher issue date. The consumer

must follow a set of “terms and conditions” in submitting his or her claim that includes submitting the actual voucher along with additional documentation.

17. Even if a consumer submits a valid claim, Defendants reserve the right to deny the claim if Defendants have “reasonable grounds to believe that [the rebate claimant has] been reminded, assisted or encouraged by [the] Merchant or any reminder service or venture to make any registration or claim.”

18. Consumers send their rebate claims to Fund Administrators for processing. Fund Administrators then sends letters to consumers alerting them to whether their claims have been accepted or denied.

19. Defendants make numerous representations designed to mislead consumers into believing NERF is a straightforward rebate program, when it is nothing more than a fixed contest.

20. First, Defendants mislead consumers into believing that their rebate programs are administered by an independent third party. In its promotional materials, Defendant NRF states that Fund Administrators is an “un-biased 3rd party” that evaluates rebate claims “fairly in strict accordance with the terms and conditions of the rebate voucher.” In fact, Fund Administrators is not at all independent – it is a company that was started by the CEO of NRF, Defendant Tim Stubbs, and was run by his former secretary, Susan Duran. Tim Stubbs initially incorporated Fund Administrators as Fund Administration LLC in January 2002. In 2003, he sold the business to his secretary at the time, Susan Duran, whom he had known for approximately 20 years. Mr. Stubbs sold Fund Administrators to Ms. Duran for \$5000, but only collected \$1000 of the purchase price. In November 2008, Mr. Stubbs bought Fund Administrators back from Ms. Duran, thus bringing Fund Administrators back under Mr. Stubbs sole control.

21. Both Fund Administrators and NRF were located in the same offices at 2132 G Street, Unit 8, Grand Junction, Colorado 81503. The office of Susan Duran, the sole employee of Fund Administrators, was located next door to Defendant Tim Stubbs’s office. Fund Administrators and NRF shared the same computer network, and NRF paid for many of Fund Administrators’ office expenses, including postage and office supplies.

22. In addition to sharing office space, NRF was involved in Fund Administrators’ operations. Even if Susan Duran determined that a claim was valid, Tim Stubbs had to review the claim before it was paid. Moreover, Mr. Stubbs was a signatory on Fund Administrators’ operating account – no checks could be paid from the Fund Administrators account without his signature. Finally, Tim Stubbs had access to Fund Administrators’ database files.

23. Defendants purposely hid the relationship between NRF and Fund Administrators. In the terms and conditions provided to consumers, Defendants

represent NRF's address to be at 2500 Broadway, Unit B-253, Grand Junction, Colorado 81503, and Fund Administrators' address to be at 2132 G Street, Unit 8, Grand Junction, Colorado 81503. However, NRF's offices are also at 2132 G Street in Grand Junction – the Broadway address is nothing more than a mail drop. In fact, Tim Stubbs owns the property at 2132 G Street, Unit G. Defendants use the appearance of separate addresses to bolster their false representation that Fund Administrators is an “independent” and “un-biased” third party that administers the rebate program.

24. Defendants also misrepresent the ease and likelihood of qualifying for a rebate. Defendants lead consumers to believe that all they need to do to collect their rebate is to remember to submit their claim on time and follow a set of simple and straightforward terms and conditions. The terms and conditions, as interpreted and applied by Defendants are not as easy or straightforward as represented.

25. Furthermore, the rebate terms and conditions are designed to allow Defendants significant flexibility in determining whether a claim is paid or denied. For example, until November 2006, the terms and conditions required consumers to submit “proof that the Check Stub [voucher stub] had been sent to, and received by, the Fund Administrator within the time limit specified by registered mail. (Return receipt from mail source).” Defendants rejected numerous claims because the consumer did not send in the original registered mail return receipt to fulfill this requirement. Additionally, upon information and belief, Defendants have rejected rebate claims even when the consumer has sent in the original registered mail return receipt, as the consumer cannot prove that he or she sent in the original.

26. The terms and conditions are designed to result in NRF paying out approximately 8% of the total face value of rebate vouchers that they have issued.

27. Defendants require merchants to fund the pool from which rebates are paid with only 15% of the face value of each voucher issued. Of that amount, NRF automatically retains 7% for itself. Defendants deposit the remaining 8% of the face value of each voucher into an escrow account with Christiana Bank & Trust (“Escrow Account”) to be set aside to pay future rebate claims. By way of example, if a consumer received rebate vouchers totaling \$10,000, the merchant would pay Defendants \$1500. Defendants would then place \$800 into the Escrow Account and retain \$700 for themselves.

28. Defendants do not disclose to consumers that they only set aside 8% of the face value of the rebate voucher to pay rebate claims. To the contrary, Defendants lead consumers to believe that their chances of receiving their rebate are much greater given that they need only remember two deadlines and follow simple instructions in order to obtain their rebate.

29. Defendants mislead consumers to believe that higher payout rates are possible because the rebate funds are “invested” in U.S. Treasury Bills over the forty-

eight months claim period. Defendants fail to disclose that they actually strip the interest made while the funds are in escrow and deposit that interest into a NRF account.

30. Defendants further misrepresent the legitimacy and viability of their rebate scheme by claiming that it is similar to rebates programs for smaller purchases. Defendants state that, “As an example, may people fail to send in rebates on such things as televisions, appliances, power tools, computer equipment or even to claim ‘flight fund’ rewards.” Defendants’ comparison of their rebate program to these rebate programs is entirely misleading, as Defendants’ program offers the consumers the opportunity to obtain thousands of dollars in rebates, while typical mail-in rebates result in substantially smaller payments to the consumer.

31. Defendants also draw deceptive comparisons between their rebate scheme and insurance. In one of its training manuals for NRF dealers, NRF gives its dealers the following script to respond to a consumer’s inquiry about how the rebate works:

The program works a lot like insurance. The unclaimed funds are used to pay those who remember to claim. You will remember to claim your \$4000.00, right? (get commitment) Now, how long have you owned your home? . . . What is the approximate value? . . . How much is your insurance premium? . . . So, if your home burns down then you’re telling me for the xxxx (\$4000.00) you have paid in they will replace your \$250,000 home? So, you can see that this is not too good to be true, right?

This comparison is entirely misleading. With insurance, few insured will suffer a qualifying event and be entitled to a claim. However, within Defendants’ rebate scheme a large percentage will remember the registration and claim deadlines and will attempt to claim their rebate. Only Defendants unfair and deceptive application of its rules will minimize the number of rebate claims paid.

32. Defendants also mislead consumers into believing that the NERF rebate program is driven by an effort to get consumers to purchase energy-efficient products. Upon information and belief, Defendants do not market the NERF rebate scheme to merchants as a way to encourage energy efficiency and conservation. Rather, Defendants market the NERF rebate program as a way for merchants to sell higher-priced items or to eliminate discounting.

33. As of February 2008, NRF has been failing to honor its terms and conditions entirely, as it simply ceased paying out any claims.

34. Additionally, upon information and belief, NRF has completely shut down and has stopped accepting claims for processing. Consumers are submitting

claims to NRF only to have them returned to sender. NRF's phone lines also have been disconnected.

35. As a result of Defendants' deceptive business practices, numerous consumers both within and outside Colorado have lost thousands of dollars.

Defendants' Activities in Violation of the CCPA

36. During the course of their business, vocation or occupation, Defendants violated section 6-1-105(1)(c), (e), (i), (j), (l) and (u) of the Colorado Consumer Protection Act, and thereby committed fraud, by, among other things:

- a. Knowingly making a false representation as to affiliation, connection, or association with another;
- b. Knowingly making a false representation as to the characteristics, ingredients, uses, benefits, alterations, or quantities of goods or services;
- c. Advertising goods or services with intent not to sell them as advertised;
- d. Advertising goods or services with intent not to supply reasonably expectable public demand;
- e. Making false or misleading statements of fact concerning the price of goods or services; and
- f. Failing to disclose material information concerning goods which information was known at the time of an advertisement or sale if such failure to disclose such information was intended to induce the consumer to enter into a transaction.

FIRST CLAIM FOR RELIEF

(Falsely Representing Affiliation, Connection, or Association with Another)

37. Plaintiff incorporates herein by reference all of the allegations contained in Paragraphs 1 through 36 of this Complaint.

38. Through the above-described conduct in the course of their business, occupation or vocation, Defendants have violated the Colorado Consumer Protection Act, Colo. Rev. Stat. § 6-1-105(1)(c) (2008), by falsely representing that Fund Administrators is an independent, non-biased third party relative to Defendant NRF.

39. By means of the above-described unlawful deceptive trade practices, Defendants have deceived, misled, and unlawfully acquired money from numerous consumers inside and outside Colorado.

SECOND CLAIM FOR RELIEF

(Falsely Representing the Characteristics, Ingredients, Uses, Benefits, Alterations, or Quantities of Goods or Services)

40. Plaintiff incorporates herein by reference all of the allegations contained in Paragraphs 1 through 39 of this Complaint.

41. Through the above-described conduct in the course of their business, occupation or vocation, Defendants have violated the Colorado Consumer Protection Act, Colo. Rev. Stat. § 6-1-105(1)(e) (2008), by falsely representing the characteristics of their rebate program, including the amount of funds set aside to pay rebates and the nature of the relationship between Defendants NRF and Fund Administrators.

42. By means of the above-described unlawful deceptive trade practices, Defendants have deceived, misled, and unlawfully acquired money from numerous Colorado consumers.

THIRD CLAIM FOR RELIEF

(Advertising Goods or Services with Intent Not to Sell Them As Advertised)

43. Plaintiff incorporates herein by reference all of the allegations contained in Paragraphs 1 through 42 of this Complaint.

44. Through the above-described conduct in the course of their business, occupation or vocation, Defendants have violated the Colorado Consumer Protection Act, Colo. Rev. Stat. § 6-1-105(1)(i) (2008), by marketing their rebate scheme to consumers as allowing all consumers an equal opportunity to obtain a rebate, when Defendants planned on only paying a limited percentage of valid rebate claims.

45. By means of the above-described unlawful deceptive trade practices, Defendants have deceived, misled, and unlawfully acquired money from numerous Colorado consumers.

FOURTH CLAIM FOR RELIEF

(Advertising Goods Or Services With Intent Not To Supply Reasonably Expectable Public Demand)

46. Plaintiff incorporates herein by reference all of the allegations contained in Paragraphs 1 through 45 of this Complaint.

47. Through the above-described conduct in the course of their business, occupation or vocation, Defendants have violated the Colorado Consumer Protection Act. § 6-1-105(1) (j) (2008), by misrepresenting to consumers that they were setting aside adequate funds to pay all valid rebate claims.

48. By means of the above-described unlawful deceptive trade practices, Defendants have deceived, misled, and unlawfully acquired money from numerous Colorado consumers.

FIFTH CLAIM FOR RELIEF

(Making False or Misleading Statements of Fact Concerning the Price of Goods or Services or the Reasons for, Existence of, or Amounts of Price Reductions)

49. Plaintiff incorporates herein by reference all of the allegations contained in Paragraphs 1 through 48 of this Complaint.

50. Through the above-described conduct in the course of their business, occupation or vocation, Defendants have violated the Colorado Consumer Protection Act. § 6-1-105(1) (l) (2008), by representing to consumers that they had a fair and legitimate opportunity to receive substantial rebates on products purchased in conjunction with the NRF rebate program.

51. By means of the above-described unlawful deceptive trade practices, Defendants have deceived, misled, and unlawfully acquired money from numerous Colorado consumers.

SIXTH CLAIM FOR RELIEF

(Failing to Disclose Material Information Concerning Goods Which Information Was Known at the Time of an Advertisement or Sale)

52. Plaintiff incorporates herein by reference all of the allegations contained in Paragraphs 1 through 51 of this Complaint.

53. Through the above-described conduct in the course of their business, occupation or vocation, Defendants have violated the Colorado Consumer Protection Act. § 6-1-105(1)(u) (2008), by, in an effort to induce consumers to participate in their rebate program, failing to disclose material information to consumers concerning program, including the relationship between Defendants NRF and Fund Administrators and the limited available funding to pay valid claims.

54. By means of the above-described unlawful deceptive trade practices, Defendants have deceived, misled, and unlawfully acquired money from numerous Colorado consumers.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for judgment against the Defendants and the following relief:

A. An order declaring Defendants' above-described conduct to be in violation of the Colorado Consumer Protection Act, Colo. Rev. Stat. § 6-1-105(1) (c), (e), (i), (j), (l) and (u) (2008).

B. An order permanently enjoining Defendants, their officers, directors, successors, assigns, agents, employees, and anyone in active concert or participation with any Defendant with notice of such injunctive orders, from engaging in any deceptive trade practices as defined in and proscribed by the CCPA and as set forth in this Complaint.

C. Appropriate orders necessary to prevent Defendants' continued or future deceptive trade practices.

D. For a judgment in an amount to be determined at trial for restitution, disgorgement, or other equitable relief pursuant to Colo. Rev. Stat. § 6-1-110(1) (2008).

E. An order requiring Defendants to forfeit and pay to the General Fund of the State of Colorado, civil penalties in an amount not to exceed \$2,000 per violation pursuant to Colo. Rev. Stat. § 6-1-112(1) (2008), or \$10,000 per violation pursuant to Colo. Rev. Stat. § 6-1-112(3) (2008).

F. An order requiring Defendants to pay the costs and expenses of this action incurred by the Attorney General, including, but not limited to, Plaintiff's attorney fees, pursuant to Colo. Rev. Stat. § 6-1-113(4) (2008).

G. Any such further orders as the Court may deem just and proper to effectuate the purposes of the CCPA.

Dated this 10th day of February, 2009.

JOHN W. SUTHERS
Attorney General

/s/

ALISSA HECHT GARDENSWARTZ, 36126*

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Pursuant to C.R.C.P. 121, § 1-26(9), the original of this document with original signatures is maintained in the offices of the Colorado Attorney General, 1525 Sherman Street, Denver, CO 80203, and will be made available for inspection by other parties or the Court upon request.